

REMARKS

This paper is responsive to the Final Office Action mailed May 12, 2010. Claims 15, 16, and 18-30 are pending. Claim 20 is canceled and its subject matter incorporated into amended independent claim 15. All claims are rejected. Applicant respectfully submits that written description support exists for amended claim 15 as support exists in the specification and claims as originally filed.

Rejection Under 35 U.S.C. § 103(a)

The present invention is generally directed to emulsifiable concentrate herbicide compositions. Claims 15, 16, and 18-30 are rejected under 35 U.S.C. §103(a) as unpatentable over Aven (EP 1025757 A1) in view of Hei (6,593,283) as evidenced by Sealed Air (MSDS Instapak Port Cleaner, Rev. 006, 03/2005). *See* Office Action at 2-6.

Applicants continue to disagree that the Office Action established a *prima facie* case of obviousness; however, even if a *prima facie* case is established, Applicants respectfully submit that it is overcome by a showing of unexpected results.

The Office Action does not find the Declaration of Paul Gioia persuasive because Applicants' comparison is "not commensurate in scope with the instant claims." Office Action at 7. In particular, the Office Action states that claim 15 is "directed to greater than 400 g/L of a dinitroaniline compound, emulsifier or emulsifier mixtures, a solvent, and DBE-IB with no concentrations." Office Action at 7-8.

Applicants have amended independent claim 15 to incorporate the subject matter of canceled claim 20. As amended, claim 15 recites in relevant part:

- the concentration of said active ingredient is at least 400 g/l...

- the concentration of the emulsifier or mixtures of emulsifiers ranges from 100 to 130 g/l; and

- the concentration of the diester co-solvent ranges from 10 to 30 g/l.

Applicants respectfully submit that the testing described in the Declaration of Paul Gioia, filed February 1, 2010, is commensurate in scope with claim 15 as amended for at least the reason that the amounts of active ingredient, emulsifier, and co-solvent fall within the ranges claimed in amended claim 15.

The Office Action also finds that Applicants' data showing the prior art formulation has degraded emulsion quality after 1 week at -5°C and that the formulation of the invention has good emulsion quality under the same conditions is "a relative assessment, and therefore not persuasive." Office Action at 8. Applicants respectfully submit that as set forth in the Declaration, emulsion quality may be assessed by those of skill in the art either quantitatively by instruments, or qualitatively by visual inspection. Applicants submit that evidence need not be quantitative in nature to provide sufficient evidence for a finding of unexpected results.

CONCLUSION

An indication of allowance of all claims is respectfully solicited.

Respectfully submitted,

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